Supreme Court, U. S.
FILED
OCT 26 1977
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

NO. 77-611

KWANG-WEI HAN, Petitioner

v.

ANDERSON AIR CONDITIONING, INC.
Respondent

# PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, ORANGE COUNTY CALIFORNIA

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pro se.

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KWANG-WEI HAN, Petitioner

V.

ANDERSON AIR CONDITIONING, INC.,
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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, ORANGE COUNTY, CALIFORNIA

The petitioner KWANG-WEI HAN respectfully prays that a writ of certiorari issue to review the judgment of the Appellate Department of the Superior Court, Orange County, California, entered on August 2, 1977.



JUDGMENT BELOW

The judgment of the Appellate Department of the Superior Court appears in the Appendix hereto.

JURISDICTION

The judgment of the Appellate Department of the Superior Court was entered on August 2, 1977. A timely petition for the rehearing and for certification to the California Court of Appeal, Fourth Appellate District, Division Two, was denied, sub-silento, upon the expiration of thirty days thereafter and this petition for certiorari was filed within 90 days of August 2, 1977. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3) as involving a substantial federal question.

QUESTION PRESENTED

1. Was petitioner denied due process and equal protection under the United States Constitution 14th Amendment where

judgment taken against petitioner, who had not received notice of trial, was set aside on condition he pay $150 attorney fees which the record disclosed he did not have the funds to pay.

STATEMENT OF THE CASE

Petitioner Kwange-wei Han, herein called "petitioner" or "Han," filed his answer to the complaint of Anderson Air Conditioning, Inc., herein called "respondent" on April 30, 1976, but never received notice of trial which was mailed by the clerk to Post Office Box 1070, Santa Ana, California, an incorrect address. The Clerk's notice was returned to the court file marked undelivered.

Han did not appear for the trial and judgment was taken against him on September 16, 1976. Han never received the Clerk's notice of entry of judgment which was mailed to the same incorrect address.



The Clerk's notice of entry of judgment was returned to the court file and marked undelivered.

Respondent obtained a writ of execution on September 29, 1976, and the return of its levy on Han's bank account was filed and showed no funds available.

Petitioner's notice of motion to vacate judgment filed on November 10, 1976, and attached declarations showed his true address to be P.O. Box 10701, Santa Ana, California, not P.O. Box 1070, Santa Ana, California; and that the error was due to his secretary's mistake.

On November 24, 1976, the judgment of September 16, 1976, was set aside but on the condition that petitioner pay $150 attorney fees to respondent's attorney by December 10, 1976 and trial was set for February 1, 1977.

On December 10, 1976, a check for $150 was mailed to respondent's attorney. Respondent ascertained that the check was not good and on December 15, 1976, respondent obtained an order reinstating the original judgment. Its levy of execution on petitioner's bank account was returned and filed and again showed no funds available.

Han again moved to have the judgment vacated and to quash writ of execution and raised the following federal questions as grounds to vacate the judgment.

1. The requirement that petitioner pay $150 attorney fees as a condition to having his day in court denied him due process and equal protection under the U.S. Constitution, 14th Amendment.

2. Trial without notice was a denial of due process.



Han's motion was denied and he appealed to the Appellate Department of the Superior Court and raised in that court the aforesaid federal questions. His appeal was denied without opinion.

Han then petitioned for Rehearing and also for Certification to the California Court of Appeal, Fourth Appellate District and again raised the following points:

1. Han had never had notice of trial, and the court's records so demonstrated. Such lack of notice was a denial of due process under the U.S. Constitution, 14th Amendment.

2. The requirement that Han pay $150 to respondent' attorney as a condition to having his day in court was suspect on due process and equal protection process. Where, as here, the court's file demonstrated that Han did not have the funds

to pay any such amount. Boddie v. Connecticut, 401 U.S. 371.

3. Under the circumstances of clear notice to the trial court that petitioner had not been served notice of trial either by the court clerk or respondent, entry of judgment on September 16, 1976, violated California law and the Constitution and laws of the United States and California law.

In support petitioner cited the United States Constitution, 14th Amendment, 28 USC 1343, 42 USC 1983 and California Code of Civil Procedure, Section 594.

California Code of Civil Procedure, section 594(a) required proof to be made to the trial court that petitioner had 15 days notice of trial. This was not done. No hearing was granted to petitioner nor was the case certified to the higher court.



REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW PENALIZED PETITIONER FOR ASSERTING HIS RIGHT TO A TRIAL ON THE MERITS BY REQUIRING HIM TO PAY $150, WHICH HE COULD NOT PAY, AS A CONDITION TO TRIAL.

Petitioner's basic plea to support issuance of the writ is summarized as follows:

1. His due process right to receive notice of trial was violated when respondent obtained its judgment of September 16, 1977, at a time when both the court and respondent reasonably knew petitioner had not had notice of trial.

2. His due process and equal protection rights were thereafter violated when his entitlement to a trial on the merits was conditioned on the payment of a $150 penalty to respondent's attorney, a penalty which Han was unable to pay, and

which the record disclosed Han was unable to pay.

The interest of petitioner Han in seeking a trial on the merits is a fundamental interest deserving constitutional protection and this Court has so held in Boddie v. Connecticut, 401 U.S. 371.

Petitioner's fundamental interest in having his case heard on the merits was lost because he could not pay $150 attorney fees by the date certain.

Justice, in the finest sense of the word, is not justice when as here it is conditioned on the payment of attorney fees. The herein judgment was denial of due process for the process due Han had a price tag which Han could not pay.

Moreover, Han's interest in securing his day in court dwarfs the interest of the State of California in requiring litigants to pay attorney fees which are not



merited, not asked for and not called for. In fact it is difficult to conceive of any rational state interest in requiring a litigant, such as Han to pay attorney fees to another litigant.

Han did not wilfully disobey any notice or order. He did not mislead court or counsel (in truth both court and counsel, from the court's own records, knew or should have known Han did not have notice of trial). Clearly, there was no discernible justification, then for giving Han his day in court if, and only if, he paid $150 attorney fees by a date certain.

This case does not involve a vast amount of money. This case does not involve powerful economic interests engaging in prohibited conduct. This case does involve one man's right to have his day in court, free of economic restraint.

Such a right is one that all persons cherish and the courts should uniformly uphold.

The decision of the Municipal Court to attach an economic condition to Han's day in Court cannot be justified and the decision of the Appellate Department of the Superior Court to uphold this judgment in the face of a grave constitutional question is equally without justification.

2. THE DECISION BELOW CONFLICTS WITH THE DECISION OF THE SUPREME COURT.

Boddie v. Connecticut, 401 U.S. 371 established the principles which Han seeks to vindicate, to wit:

A. The right to a trial on the merits is a basic interest in our society.

B. Due process embodies a meaningful opportunity to be heard.

C. A cost requirement may offend due process where it cuts off the right to be heard.



The courts below declined to apply these principles to Han's case. Thus, the Municipal Court imposed a heavy cost burden on Han as a condition to a trial on the merits. The evil inherent in this approach is that it was done in an off-hand manner without regard to the litigant's ability to pay. Moreover, the condition was imposed in the face of clear evidence in the record of two returns by the levying officer that Han did not have the funds to pay.

The Appellate Department of the Superior Court upheld the lower court's approach without opinion and did so despite the conflict with the federal decisions.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the

judgment of the Appellate Department of the Superior Court, Orange County California.

Respectfully submitted,

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Counsel for petitioner,
pro se.



## APPENDIX

Entered in the Register of Actions on August 2, 19 77

W. E. St John, County Clerk, by K.H. OWENS, Deputy

FILED
AUG 2 - 1977
WILLIAM E. ST JOHN, County Clerk
by [illegible] Deputy

APPELLATE DEPARTMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

| | |
|---|---|
| ANDERSON AIR CONDITIONING, INC., Plaintiff(s) and Respondent, vs. KWANG-WEI HAN, et al., Defendant(s) and Appellants. | NO. AP- 2226 ON APPEAL from the MUNICIPAL COURT of the CENTRAL ORANGE COUNTY JUDICIAL DISTRICT HON. WILLIAM W. THOMPSON JUDGE |

This cause having been argued and submitted, and fully considered, judgment is ordered as follows:

It is ORDERED AND ADJUDGED that the Judgment denying Appellant's Motion to Set Aside Default and Quash Writ of Execution, made and entered in the Municipal Court of the above designated Judicial District, County of Orange, State of California, in the above entitled cause be and the same is hereby affirmed.

The cause is remanded to the Municipal Court for further proceedings.

Dated this 2nd day of August, 19 77.

[signature] Judge

[signature] Judge

[signature] Presiding Judge

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